

BellSouth Corporation
Suite 900
1133-21st Street, NW
Washington, DC 20036-3351

glenn.reynolds@bellsouth.com

Glenn T. Reynolds
Vice President -
Federal Regulatory

202 463 4112
Fax 202 463 4142

August 15, 2002

EX PARTE

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th St. SW
Washington, D.C. 20554

Re: WC Docket 02-150

Dear Ms. Dortch:

In the course of recent ex parte meetings in the above-referenced proceeding, Commission staff has requested that BellSouth respond to a number of specific questions. The following information is a partial response to those requests. We will provide responses to the remainder of the staff's questions as soon as possible.

Question: Please provide a response to NewSouth's Reply comments.

Response: In NewSouth's reply comments to the FCC on August 5, 2002, NewSouth discusses network outages and access to loop/transport UNE combinations (EELs), audits, billing and deposits.

I. Interconnection

A. Network Outages

NewSouth identifies seven network outages for which it says "BellSouth remains unwilling to address the root causes of the disputes raised by NewSouth." To the contrary, BellSouth has identified the cause of the outages, resolved the problems and taken action to help prevent these problems from happening again. In addition, BellSouth met face-to-face with NewSouth representatives in

Greenville, South Carolina on August 7 to discuss these very issues. At that meeting, there was no mention that NewSouth had sent the August 5 memorandum to the FCC.

BellSouth has investigated the seven (7) outages referenced in NewSouth's comments and determined that only three (3) of the outages were specific to NewSouth. Three of the outages affected not only NewSouth but other CLECs and/or BellSouth traffic as well. BellSouth could not find a record of a trouble report for the seventh (Mobile, Alabama) outage on January 7, 2002. The six (6) outages BellSouth could investigate occurred over a ten-month period and occurred in four different states, and no systemic operational issues have been identified. During the time period covered by these six incidents, BellSouth has made literally thousands of translations changes in its switches, and for the overwhelming majority, the changes were accomplished without incident. For NewSouth alone, BellSouth has made translations changes for approximately 4,863 trunks during this time period. While BellSouth's goal is to strive for perfection, the reality is that human errors do occur from time to time. In fact, human error is at the root of four (4) of the outages that NewSouth complains about. In each case BellSouth has taken appropriate action to provide additional training and/or job aids to the personnel involved. An Independent Local Exchange Carrier ("Independent LEC") routing its CLEC-bound traffic to an incorrect trunk group caused one of the outages and one outage occurred due to BellSouth's sizing a reciprocal trunk group too small for the traffic offered.

The Commission should also note BellSouth's performance as measured by the Customer Trouble Report Rate for NewSouth's Local Interconnection Trunks. This data shows that for the time period January 2002 through June 2002, BellSouth's service for NewSouth was equal to or better than the service provided to BellSouth's retail customers.

To summarize, NewSouth apparently wants the Commission to know of only those incidents, which in NewSouth's mind at least, BellSouth's performance was not adequate. In each of those incidents, BellSouth has thoroughly investigated each of NewSouth's complaints and has taken both corrective and preventative action meant to prevent a recurrence of the problem. Further, when placed in the proper context of how many transactions BellSouth performs on behalf of NewSouth, it becomes immediately apparent that BellSouth is treating NewSouth at least at parity with (and in many instances better than) how BellSouth treats its retail customers. Accordingly, BellSouth is complying with its obligations.

B. Cost-Based Interconnection

NewSouth states that BellSouth charges tariffed access charges for all or portions of interconnection trunks that NewSouth orders from BellSouth in violation of its interconnection agreement. NewSouth's Interconnection

Agreement clearly states that each Party shall report to the other the PLF factor. NewSouth failed to do so. The PLF represents the portion of switched dedicated transport that is used for local, and the absence of a PLF indicates that the Party used no switched dedicated transport for local traffic. If no local traffic flows over the trunk, it is appropriate for BellSouth to bill NewSouth tariffed access charges. The applicable portions of the interconnection agreement can be found below.

1.2.2 Pursuant to 1.2.1 above, as part of Local Interconnection Call Transport and Termination Service, the originating Party may obtain **Local Channel** facilities (i.e., entrance facilities) from the terminating Party from the originating Party's specified Interconnection Point to its Serving Wire Center. Such facilities may be purchased out of the terminating party's Commission approved access services tariff or as unbundled network elements at the rates set forth in Exhibit A to this Attachment. If tariffed access services are purchased, the portion of Local Channel facilities utilized for Local Traffic shall be determined based upon the application of the Percent Local Facility (PLF) Factor as defined in this Attachment. Additionally, the charges applied to the portion of the tariffed Local Channel used for Local Traffic as determined by the PLF are as set forth in Exhibit A to this Attachment. This factor shall be reported in addition to the switched dedicated transport jurisdictional factors specified in the BellSouth intrastate and interstate switched access tariffs.

1.2.3 Pursuant to 1.2.1 above, either Party may obtain **Dedicated Interoffice Transport** facilities from its designated Serving Wire Center to the other Party's first point of switching. Such facilities may be purchased out of the terminating party's access services tariff or as unbundled network elements at the rates set forth in Exhibit A to this Attachment. If tariffed access services are purchased, the portion of Dedicated Interoffice Transport facilities utilized for Local Traffic shall be determined based upon the application of the Percent Local Facility (PLF) Factor as defined in this Attachment. Additionally, the charges applied to the portion of the tariffed Dedicated Interoffice Transport used for Local Traffic as determined by the PLF are as set forth in Exhibit A to this Attachment. This factor shall be reported in addition to the switched dedicated transport jurisdictional factors specified in the BellSouth intrastate and interstate switched access tariffs.

5.2 Percent Local Facility. Each Party shall report to the other a Percent Local Facility ("PLF"). The application of the PLF will determine the portion of switched dedicated transport ordered via BellSouth's E6 tariff to be billed per the local jurisdiction rates. The PLF shall be applied to multiplexing, local channel and interoffice channel switched dedicated transport ordered from BellSouth's E6 tariff and utilized in the provision of local interconnection trunks. Each Party shall update its PLF on the first of January, April, July and October of the year and shall send it to the other Party to be received no later than 30 calendar days after the first of each such month to be effective the first bill period the following month, respectively. Requirements associated with PLU and PLF calculation and reporting shall be as set forth in BellSouth's Percent Local Use/Percent Local Facility Reporting Guidebook, as it is amended from time to time.

II. Access to Loop/Transport UNE Combinations (EELs)

A. TIMELINESS/COST of DELAY

When NewSouth submits a request to convert access circuits to EELS or Currently Combined Combinations, NewSouth does so via a spreadsheet. These spreadsheets are sent to the Local Service Manager ("LSM") who is associated with BellSouth's account team for NewSouth. This overall process includes the self-certification and qualification processes. With the self-certification process, CLECs are required to indicate under which option they have chosen to convert. In addition, the LSM verifies that the circuits qualify through the restriction that BellSouth does not connect UNEs to tariff services. The turn-around time for this part of the process is targeted for 7 days. Once this process is completed, the LSM forwards a copy of the spreadsheet to the Local Carrier Service Center ("LCSC") project management for effectuating the conversions. Note that each spreadsheet contains a minimum of 15 circuits and there is no maximum number of circuits on a given spreadsheet. The spreadsheets are input into a TaskMate program called PTOPS. The LCSC readies the spreadsheet for order issuance by PTOPS and submits the required service orders into the downstream systems for processing. The resulting service orders are verified for accuracy and any errors are corrected. The project manager and the LCSC process are targeted for an interval of 30 days. This gives the CLEC an overall 37-day target for completing the entire conversion process.

NewSouth alleges that on average it takes BellSouth more than 60 days to convert a special access circuit to an EEL. However, for all EEL conversion orders sent via a spreadsheet to the CRSG from January 2002 through July 2002, conversion from access circuits to EELs has averaged 43.375 days.

In addition, an individual Local Service Request ("LSR") for a request of up to 14 circuits to be converted would have a completion target of ten (10) days. The larger volume circuit conversion request via a spreadsheet is project managed by BellSouth, which adds to the overall conversion interval.

.

B. AUDIT REQUEST

BellSouth has fully complied with its obligations under the Commission's *Supplemental Order Clarification* concerning its right to audit EELs and has responded to the complaints of NewSouth and other CLECs in its filings regarding the NuVox petition for Declaratory Ruling to the FCC (cc Docket No. 96-98). Contrary to NewSouth's assertion that BellSouth is attempting to conduct routine audits, it is BellSouth's policy to routinely check a pre-determined list of triggers for all the CLECs who purchase combinations of loops and transport. BellSouth will seek to audit carriers about whom that review triggers concern. NewSouth's insistence that BellSouth must provide a concern that satisfies NewSouth would essentially nullify BellSouth's right to audit under any circumstances as NewSouth likely will never be satisfied with BellSouth's concern.

NewSouth claims that BellSouth is insisting on hiring an "ILEC consulting group" to conduct the audits. This is simply not true. BellSouth hired a firm of experienced telecommunications professionals with experience in auditing usage and who understand the Commission's orders related to EELs. The audit firm has worked for ILECs, ICOs, carrier associations, and some CLECs. Several of the ICOs are also CLECs.

III. BILLING AND DEPOSITS

NewSouth has been actively disputing their billing. It is true that NewSouth has submitted approximately \$8M in disputes over the past two years. NewSouth submits disputes on all invoices on a monthly basis. According to BellSouth's billing system, BellSouth has issued credits of \$3.2M, which is approximately 52% of the disputes submitted that have been resolved. During the 2 year time period reviewed, based on total billing to NewSouth, the accuracy of BellSouth's bills is over 95%.

Since March 2002, BellSouth and NewSouth dispute teams have been working cooperatively to improve the dispute process between the companies. We have implemented weekly conference calls to discuss the open issues and to improve the quality of disputes and resolutions between NewSouth and BellSouth. We have each agreed to changes in our internal processes so they work more efficiently together. BellSouth believes this process is operating effectively.

The second billing issue NewSouth raises alleged concerns about BellSouth's deposit policy. BellSouth's deposit requests are justified. First, the Interconnection Agreement language is very clear as stated in Attachment 7, Section 1.8 and Attachment 1, Section 6.7 through 6.7.6. Attachment 6.7.5 reads "BellSouth reserves the right to increase the security deposit requirements when, in its reasonable and non-discriminatory judgment, circumstances so warrant and/or gross monthly billing has increased beyond the level initially used to determine the security deposit". Attachment 7, section 1.8 reads, "...if, in the reasonable opinion of BellSouth, circumstances so warrant and/or monthly billing has increased beyond the level initially used to determine the level of security, BellSouth reserves the right to request additional security..." NewSouth's billing has increased by more than \$1,000,000 since they were last reviewed and required to pay a deposit. This additional amount, as clearly stated in the Interconnection Agreement, has increased beyond the level initially used to determine the level of security. Moreover, NewSouth's current deposit does not provide even one month of billing coverage. Notably, BellSouth does not require NewSouth to pay a cash deposit. NewSouth can provide a Bank Letter of Credit or a Surety Bond, its choice.

Question: Please respond to the Birch's UNE pricing concern filed in its reply comments.

Response: BellSouth's prior policy was to amend rates in agreements only when the UNE rates had been approved by a commission order. The purpose of this policy was to ensure finality of rates prior to contract amendments. BellSouth has revised its policy to allow amendment to contracts for rates found in SGAT filings before the state commissions have approved such SGATs. In the past, BellSouth would wait for either the 60 days to run from the date of filing the SGAT or the commission order approving the SGAT. BellSouth's revised policy should address Birch's concern.

Question: Of the 35 flow through improvement items referenced in Bill Stacy's affidavit of June 20, 2002, what is the status of the 4 Flow-through Task Force items that have not been implemented?

Response: As shown on Stacy Exhibit WNS-49 filed on June 20, 2002, the 4 flow through task force items are scheduled to be implemented in Release 10.6 during the weekend of August 24-25, 2002. FTTF-11, Mechanization of UCL-Non Designed, will be implemented in two phases. The first phase is scheduled to be implemented in release 10.6, and the second phase is scheduled for release 11.0 during the weekend of December 7-8, 2002.

Question: Please discuss the status of the double billing problem on line sharing raised by Covad.

Response: This issue is discussed in the Reply affidavits of David Scollard at paragraphs 14-16 and William Stacy at Paragraphs 222-224.

As discussed in the Scollard affidavit, when a Line Share Local Service Request (LSR) is submitted, two separate orders are generated as described by Covad. Both orders are given the same due date; however, there have been some instances, as a result of order due date changes, where the billing order completes before the provisioning order. This is certainly not the norm and when early billing does occur the amount is minimal.

Change Request 0779 has been issued via the CCP to track and correct the early billing problem. This change request is targeted to be implemented in Release 11.0 during the weekend of December 7-8, 2002. In addition, BellSouth, through its internal process, has opened Harvest CCC feature 21915 as well as a Service Order Communication System (SOCS) request in an effort to correct this problem. The SOCS portion of this request is scheduled for completion by August 31, 2002. The remaining portion is expected to involve major programming changes for which user requirements are still being developed. This portion of the request is currently scheduled for completion by December 8, 2002.

The Stacy affidavit discusses the rare scenario where Covad claims it is unable to supplement an order to add loop conditioning on a Line Sharing line. As discussed, this occurs only when **all** of the following occur:

- The billing and provisioning order due dates get out of sync as a result of order due date changes; and
- The billing order erroneously completes before the provisioning work is completed; and
- The Loop Makeup data contained in LFACS did not reflect loop conditions (excessive bridged tap, load coils, etc.) that are incompatible with Line Sharing and are discovered at the time of provisioning.

It is true, that under these circumstances, Covad is unable to modify the order electronically but, as described in the Stacy affidavit, other options exist and contrary to Covad's claim, it is no longer necessary for Covad to submit a Disconnect order on the loop that was not connected.

Question: Please discuss the OSS downtime issue in the Reject Interval measure. Can BellSouth restate the data excluding the downtime?

Response: This issue was addressed in Exhibit PM-2 of Alphonso Varner's affidavit beginning at 39, and in the Georgia/Louisiana application. For those LSRs for which BellSouth did not meet the benchmark, BellSouth has conducted a detailed root cause analysis of the process for electronic rejects. This analysis addresses the ordering systems (EDI, TAG, and LENS) used by the CLECs and the back-end legacy applications, such as SOCS, that are accessed by the ordering systems. BellSouth's root cause analysis determined that a number of LSRs that did not meet the one-hour benchmark were submitted when back-end legacy systems were out of service and were unable to process the LSRs. Because such downtime should be excluded from the measurement, BellSouth implemented a coding change in PMAP, intended to ensure that scheduled OSS downtime was properly excluded. The coding change assumed that EDI and TAG timestamps reflected Eastern Time. However, only the timestamps used by TAG actually reflect Eastern Time. As a result of this discrepancy, an hour is being added during PMAP timestamp "synchronization," where outbound EDI timestamps are not provided by the source system and LEO timestamps are used instead. This event causes the results to inaccurately reflect the Reject Interval duration and occurs in about 5% of cases of the orders submitted via EDI. A change to address this issue for EDI was implemented effective with February 2002 data, for non-LNP and non-xDSL orders. The update for LNP

orders was implemented with the release of April 2002 data and xDSL were updated concurrent with OSS Release 10.5 for June, 2002 data.¹

The data cannot be retroactively restated to exclude the downtime but it is clear that not excluding the downtime actually understates BellSouth's performance for this measurement.

Question: Please explain the impact on the reject interval in the situation where both a FOC and a Reject are associated with a single LSR.

Response: BellSouth's root cause analysis has identified an additional issue that impacts the Fully Mechanized Reject Interval sub-metrics. This issue arises when a fully mechanized Firm Order Confirmation ("FOC") is followed by a manual clarification or reject, a scenario that occurs when the Local Carrier Service Center must resolve specific types of errors after the issuance of the FOC. However, LEO does not allow the service representative to claim the LSR after the FOC has been sent; therefore, the LSR is counted as Fully Mechanized and appears in both the Fully Mechanized FOC Timeliness and Reject Interval metrics. The interval recorded for the reject begins when the LSR was originally received and ends when the reject notice was sent even though a FOC had already been sent and provisioning work had begun on the order. This issue overstates the time required for BellSouth's Fully Mechanized reject notices and, as a result, understates BellSouth's performance of the timeliness measurement. BellSouth is currently analyzing this situation to determine an appropriate solution.

Question: When will BellSouth fix the LEO header table issue and what data month will show results of fix?

Response: This fix will be implemented with release 10.6 on 8/23/02. Therefore, September will be the first full month affected by this fix.

Question: Please provide the state rules or orders that prohibit or control BellSouth winback activities in AL, KY, MS, NC, and SC

Response: Attached are copies of the SC Winback Order (dated Oct. 29, 2001) and the Order on Recon. (dated Dec.(sic - is actually Jan.) 9, 2002). Please refer to paragraph 9 on page 13 of the SC Winback Order for the verbiage prohibiting BellSouth from engaging in any winback activities for ten (10) calendar days from the date that service has been provided to a customer by a

¹ This paragraph also clarifies the information provided in the Affidavit of Alphonso Varner filed June 20, 2002, Exhibit PM-2, Paragraph 40; Exhibit PM-3, Paragraph 40; Exhibit PM4, Paragraph 40; Exhibit PM-5, Paragraph 40; Exhibit PM-6, Paragraph 40.

CLEC. The 2nd paragraph on page 2 of the Order on Recon. clarified that the prohibition on sharing of information among BellSouth divisions found in the Winback Order should begin at the time that BellSouth comes into possession of information from the CLEC which would suggest that a specific customer is considering a proposal from the CLEC.

The NCUC addressed winback requirements in its 271 Notice of Decision dated May 23, 2002, specifically see paragraph 1, which states that "BellSouth shall abstain from any marketing activities directed to a customer for seven days after the customer switches to another local telephone company." A copy of this order was included in the Five State filing (NC, Appendix C, Vol. 11, Tab. 24)

In its August 16, 2001 Interim Order in Docket No. 14232-U, the GPSC adopted the Staff's recommendation "prohibit[ing] BellSouth from engaging in 'win back' activities for a seven-day period after a customer switches its local provider, and initiate a Public Service Commission 90-day study." Order at p. 1.

In its September 21, 2001 Order in Docket No. U-22252-E, the LPSC adopted the Staff Recommendation "[t]hat the Commission prohibit BellSouth from engaging in any win back activities for 7 days once a customer switches to another local telephone service provider, including (1) prohibiting BellSouth's wholesale divisions from sharing information with its retail divisions, at any time, such as notice that certain end users have requested to switch local service providers, and (2) prohibiting BellSouth from including any marketing information in its final bill sent to customers that have switched providers." Order at p. 3.

Both the Georgia and Louisiana decisions are addressed in paragraph 145 of the Joint Affidavit of John Ruscilli and Cindy Cox in BellSouth GA/LA 271 application filed October 2, 2001. Paragraph 46 of the Ruscilli/Cox Joint Reply Affidavit filed August 5, 2002 in the Five State application discusses the fact that the Commission addressed this issue in ¶¶301-303 of its GA/LA Order. The Commission found, "in the absence of a formal complaint to us that BellSouth has failed to comply with section 222(b), the winback issue in this case has been appropriately handled at the state level, and that the actions undertaken by the state commissions and BellSouth should be sufficient to ensure it does not recur." For consistency throughout its region, BellSouth has adopted as its standard policy not to engage in any winback activities for ten (10) calendar days from the date that service has been provided to a customer by a CLEC.

Question: Please explain the Missed Appointments for high capacity loops for B.2.18.19.1.1 referenced in Varner Reply affidavit at ¶ 226.

Response: In January there were 3 CLEC misses in Alabama. The CLEC ordering volume was 81 for January and the retail analog for January was 1.24%. Applying the retail analog of 1.24% to the 81 orders would allow only 1

miss in order for the CLEC result to be equal to the retail result on a simple, non-statistical, comparison. The 3 misses in January were due to facility shortages. A facility shortage means that no facility was available to serve that end-user location. This condition would affect all carriers, including BellSouth retail, that attempted to serve that particular end-user location. To clear a facility shortage requires construction or rearrangement of equipment to create the number of facilities required to fill the order. Even though these orders were not completed on the due date, none were delayed more than 5 days.

In February, there were 2 CLEC misses. The CLEC ordering volume was 82 and the retail analog was 0.50%. Applying the retail analog to the CLEC ordering volume would allow no CLEC misses. Of the 2 misses, one was due to an incorrectly issued order by the LCSC and the other was due to a problem in the central office.

For March, there were 8 CLEC misses, all due to facility shortages as stated in ¶ 226 of the Varner reply affidavit. The CLEC ordering volume was 76 and the retail analog was 1.24%. Multiplying 76 by 1.24% would allow 1 miss. In April there were 9 misses, all due to facility shortages as stated in ¶ 226 of the Varner reply affidavit. The CLEC ordering volume was 56 and the retail analog was 7.88%, resulting in an allowable CLEC miss of 4. The absence of facilities for a particular customer, of course, effects wholesale and retail orders equally.

Question: Where in the record is the refiled reject interval data for UNE Other Non-Design for April and May and the discussion explaining why it was recalculated?

Response: As stated in the Reply Affidavit of Alphonso Varner, filed August 5, 2002, at paragraph 164, "BellSouth also reviewed the fully and partial mechanized rejects for UNE Other Non-Design for all five states during April and May 2002. There was only one reject in both months that was affected by this change and in April, the timestamps were identical, and in May 2002, it was different by only 2 seconds. There was no change in the results for these sub-metrics based on the review. BellSouth has conducted a similar analysis for the months of March and June and arrived at essentially the same conclusion. Specifically, there were 2 rejects in March and 1 reject in June affected by this change but all had identical time stamps. As a result, there is no change in the results for these sub-metrics.

Question: Please clarify the number of orders that can be included on a single LSR.

Response: Up to 25 orders may be included in a single LSR, provided the orders are for the same customer at the same location. This order limit applies

to both CLEC and BellSouth retail orders, and is a result of limitations in BellSouth's legacy systems.

In accordance with Commission rules, I am filing copies of this notice and attachment and request that they be included in the record of the proceeding identified above.

Sincerely,

A handwritten signature in black ink, appearing to read "Glenn T. Reynolds". The signature is fluid and cursive, with the first name "Glenn" and last name "Reynolds" clearly distinguishable.

Glenn T. Reynolds

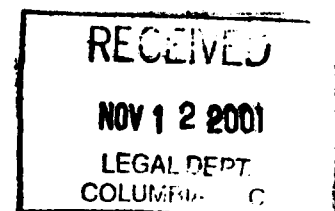
cc: Michelle Carey
Aaron Goldberger
Susan Pie
James Davis-Smith (Department of Justice)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2000-378-C – ORDER NO. 2001-1036

OCTOBER 29, 2001

IN RE: Southeastern Competitive Carriers)	ORDER RULING ON
Association, NewSouth Communications)	COMPLAINT
Corporation and TriVergent Communications)	
)	
Complainants/Petitioners,)	
)	
vs.)	
)	
BellSouth Telecommunications, Inc.,)	
Respondent)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Complaint of the Southeastern Competitive Carriers Association (SECCA), NewSouth Communications Corporation (NewSouth), and TriVergent Communications (TriVergent) (collectively, the Complainants) against BellSouth Telecommunications, Inc.(BellSouth). The Complaint was filed under the authority of S.C. Code Ann. Section 58-9-576 (B)(5) (Supp. 2000) and Order No. 2000-676, our Order Ruling on Guidelines. The Complainants take issue with BellSouth's Win Back Promotion, which offers discounts to business customers being served by competitive local exchange carriers (CLECs) who return to BellSouth. The Complainants allege that BellSouth is abusing its market position, since the promotion solely targets customers of CLECs, and is anti-competitive. BellSouth denies the substantive allegations of the Complaint.



Accordingly, this matter was scheduled for hearing on February 22, 2001 in the offices of the Commission. The Honorable William Saunders, Chairman, presided. Frank Ellerbe, III, Esquire, represented the individual Complainants, Southeastern Competitive Carriers Association and NewSouth Communications Corporation. John J. Pringle, Jr., Esquire, represented TriVergent Communications. The Complainants presented the testimony of Jake E. Jennings, David K. Hudson, and Jack Lovegren. BellSouth Telecommunications, Inc was represented by Caroline N. Watson, Esquire, William F. Austin, Esquire, and Patrick Turner, Esquire. BellSouth presented the testimony of Cynthia K. Cox and Robert H. Sellman, III. The Commission Staff (the Staff) was represented by F. David Butler, General Counsel. The Staff presented the testimony of Joseph W. Rogers.

David K. Hudson of NewSouth testified for the Complainants. (Tr. at 13-50.) Hudson testified that the Win Back Promotion is designed to target customers of CLECs who were former BellSouth customers. The two aspects of the promotion were, first, a waiver of line connection charges for customers responding to the promotion, and, second, substantial discounts based on monthly billed revenues and the length of commitment that customers are willing to make to BellSouth. The discounts can be as much as 18% for customers with monthly total bill revenues of \$5,000-\$10,000 committing to BellSouth for a period of 36 months. Hudson stated that this program would be devastating to the CLECs, and that it hurts competition by making it difficult for a company like NewSouth to grow. The promotion, according to Hudson, lures away a CLEC's existing customers. Hudson also states that the promotion chills new entrants,

and gives BellSouth a tool to avoid lowering prices to its vast group of customers who have not yet chosen to switch to another provider. The end result of the promotion, according to Hudson, is detrimental to competition.

Jake Jennings of NewSouth also testified. (Tr. at 50-85.) Jennings alleged that the promotions are unreasonably discriminatory and anti-competitive. Jennings urged the Commission to examine the goals of rapid competition in the local exchange market and all telecommunications markets, investment and innovation in the telecommunications market, and universal service. Jennings stated that BellSouth is still a monopoly provider, holding over 90% of the market share within its service territory in South Carolina. In addition, Jennings alleged that BellSouth is the sole supplier of network elements to CLECs. Because of these and other factors, Jennings stated that BellSouth is able to exert market power when competing with CLECs.

Jennings stated a belief that BellSouth's promotion is discriminatory, since it is only offering the promotion to business customers that have switched to CLECs, not all business customers. Jennings further stated a belief that the promotion should be offered to all business customers. Additionally, Jennings noted that the FCC has held that volume and term discounts should be made available to any customer with sufficient volumes or willing to commit to a given term. Further, Jennings opined that BellSouth's promotion discourages competition in the local exchange market. Lastly, Jennings urged the Commission to adopt safeguards that prevent BellSouth from abusing its market power within its local exchange area.

TriVergent presented the testimony of Jack Lovegren. (Tr. at 65-93.) Lovegren testified that the Win Back Promotion would have a harmful effect on the development of a competitive market for local exchange services in South Carolina. Lovegren noted that 99% of the customers that TriVergent seeks to serve have a prior relationship with BellSouth. BellSouth's Contract Service Arrangements, according to Lovegren, are provided to customers at rates that TriVergent cannot effectively counter without taking a loss. Lovegren goes on to describe BellSouth's "Key Customer" Program. In order to receive the benefits of this program, Lovegren notes that a customer must obligate itself to BellSouth for a period of one to three years. There is termination liability if a customer terminates this program early.

Lovegren opined that the Win Back Promotion is harmful to the development of meaningful local exchange competition, because BellSouth, with its history of prior relationships with customers, unlimited ability to offer deals and discounts, and financial wherewithal already enjoys advantages that will enable it to outbid a startup competitor, even without the existence of the Win Back Promotion. The CSA authority, in combination with promotions such as the Key Customer program and other promotions enables BellSouth to substantially preserve its market share and steadily increase its South Carolina revenues, according to Lovegren. Lovegren further stated a belief that the ability to target specifically those customers whom CLECs have been successful in garnering simply goes too far.

In addition, Lovegren disagreed with the notions propounded by BellSouth that the Win Back Promotion is the type of competition envisioned by the

Telecommunications Act of 1996, and that the Promotion is simply part of BellSouth's efforts to compete in the marketplace. Lovegren noted that the Public Utility Commission of Texas recognized the effect that Win Back programs can have on the development of a competitive market for local exchange services, and conditioned a Bell's entrance into the interLATA market on its willingness to forego the use of Win Back programs. Lovegren also states that BellSouth has withdrawn its Win Back Promotions in Tennessee, North Carolina, and Alabama before implementation.

BellSouth presented the testimony of Robert H. Sellman, III, Assistant Vice President Sales and Service, South Carolina and North Carolina, for BellSouth's Small Business Services organization. (Tr. at 93-158.) Sellman first described the Promotion at issue. The Promotion was filed with the Commission in May of 2000, and had expired at the time of the hearing on the matter. According to Sellman at the time of the hearing, twenty-five customers originally signed up for the promotion, and twenty-three were still participants at the time of the hearing. Subsequent to the hearing, BellSouth requested that its testimony in this regard be amended to show forty-nine participating customers. The Win Back Promotion provided limited discounts based on term agreements to previous BellSouth customers who wished to return to BellSouth for local telephone service. The Promotion provided eligible customers with monthly savings of 8% to 18% off their monthly total billed revenue, depending upon whether a customer selected a term agreement of 12, 24, or 36 months. The Promotion was available to previous BellSouth business customers who had elected to go to another service provider within the past two years, who chose to return to BellSouth, and who met certain terms and

conditions. Generally, the Promotion was available to all business customers in South Carolina who were receiving service from another local exchange carrier and who met the other eligibility requirements for the Promotion. To be eligible, the business customer had to have monthly total billed revenue of \$70-\$10,000 when they left BellSouth and they had to be willing to sign a term agreement of 12, 24, or 36 months.

Sellman stated that BellSouth introduced the Win Back Promotion as a direct response to competition in the business market in South Carolina. Sellman noted that if BellSouth were somehow prohibited from attempting to win back customers who have left it for another carrier, those customers would be deprived of a competitive alternative that otherwise would be available to them. Sellman further stated that even after applying the deepest discount offered under the promotion, BellSouth's prices are still above most of the tariffed prices its competitors offer for comparable services. Sellman did note that, even with the discounts, the customers under the promotion pay more than the cost of the services. Sellman notes that it often takes more to win back a customer that has established service with a different provider than it does to keep a customer who already has service with BellSouth. This mitigated against offering the promotion to BellSouth's existing customers.

Sellman testified that BellSouth has lost anywhere from 20% to nearly 25% of its market share in South Carolina and it is continuing to lose market share at a steadily increasing rate. Sellman states that BellSouth must be able to compete to win back customers lost to competition, and that it is unfair for CLECs to compete for BellSouth's customers and to then attempt to insulate those customers from competition by

BellSouth. Sellman stated that the consumers of South Carolina are the ultimate beneficiaries of competition, and offers such as this Promotion and the customers in South Carolina who have signed up for this Promotion and are receiving its benefits, should be allowed to continue to receive those benefits. Sellman summarized by stating that this Commission should rule that it is appropriate for BellSouth to engage in Win Back activities like this Promotion.

Cynthia K. Cox also testified for BellSouth. (Tr. at 159-196.) Cox discussed the discrimination and anti-competition allegations contained in the Complaint in this matter. Cox stated that BellSouth's Win Back Promotion was a reasonable response to the actual competition that exists in South Carolina. First, Cox noted that Win Back Promotions are responses to competition from rivals and as such, they help to advance competition in the market. Cox testified that Win Back Promotions are means that BellSouth uses to respond to a specific competitive threat in a target, nondiscriminatory manner. Second, Cox testified that customers are the beneficiaries of the Win Back Promotions. Third, such Promotions have tremendous economic and public policy benefits, according to Cox.

Cox addressed Complainant witness Jennings' allegation that the Promotion violates the FCC's criteria. Cox stated that Jennings' focus is on the portion of the FCC Order that states that incumbent LECs "must make them available to any customer," but ignores the language concerning "significant volumes or willing to commit to a given term." Further, Cox notes that the FCC discussed Win Back efforts by incumbent local exchange carriers (ILECs) in its September 3, 1999 Order on Reconsideration and Petitions for Forbearance, CC Docket No. 96-149 (Order No. 99-223). Cox states that the

FCC noted in that Order that “restrictions on winback activities may deprive customers of the benefits of a competitive market.” The Order went on to state that “Winback facilitates direct competition on price and other terms, for example, by encouraging carriers to “out bid” each other for a customer’s business, enabling the customer to select the carrier that best suits the customer’s needs.” See Paragraph 69.

Cox goes on to state that the Promotion is consistent with BellSouth’s promotional tariff provisions approved by this Commission. Further, one of the eligibility criteria for the Promotion is that the subscriber must be a former BellSouth customer. All former BellSouth customers that meet the eligibility criteria have an equal opportunity to participate in the Promotion, according to Cox. Therefore, in Cox’s opinion, targeting a promotion to such customers is authorized by BellSouth’s tariff. The Promotion is also consistent with S.C. Code Ann. Section 58-9-576(B)(5) (Supp. 2000), according to Cox.

The Commission Staff presented the testimony of Joseph W. Rogers, who is Coordinator of Telecommunications Tariffs for the Commission’s Utilities Department. (Tr. at 197-219.) Rogers testified that on May 30, 2000, BellSouth filed a promotional offering called Welcome Back Winback and Winback Installation Program with the Commission. Staff found no improprieties with the promotional material as the result of its review of the promotions. The promotions were published on the Commission’s June 5, 2000, Utilities Department Agenda as Items 6 and 7 on the “Advised” section of the agenda.

Rogers testified that a promotion is very similar to a sale on a particular product or products in the retail private sector. It is an incentive offered by a telecommunications

carrier by offering a discount for a period of time or a waiver of non-recurring fees normally required for purchase of services. Rogers noted that the purpose of a promotion is to attract customers and to gain business.

Rogers opined that BellSouth had the authority to offer the Promotion in question to its customers in South Carolina, pursuant to Section A2.10.1 (A)(B) of BellSouth's General Subscriber Service Tariff. That section states that BellSouth may offer special promotions on new or existing services/products for limited periods. It further states that promotions will be offered on a completely non-discriminatory basis to all subscribers meeting eligibility criteria for each promotion. Rogers noted that eligibility criteria were defined in the Promotion under consideration. In this case, the promotion is available to former BellSouth customers who had left BellSouth for another local service provider and who want to return to BellSouth. Discounts, based upon monthly billed revenues and term periods of 12, 24, or 36 months, are uniform. To clarify, the promotion has a consistent criteria menu for customer qualification, according to Rogers. Rogers noted that the Win Back Promotion does not allow for so-called cherry-picking of subscribers to whom to offer the service.

Rogers further testified that Staff's review of the Promotion found it to be identical to a Contract Service Arrangement (CSA) which is offered to a customer in response to competition or in response to a competitive offer. Rogers expressed the opinion that the Win Back Promotion is a CSA in the format of a promotion.

Rogers also expressed the opinion that the Win Back Promotion does not impede local competition. A CSA is offered to an individual in response to a competitive

situation. Rogers stated that CSAs are not impediments to competition. Similarly, the Win Back Promotion is offered to customers who have chosen to enter the competitive telecommunications market by “shopping” for a telecommunications provider. BellSouth could acquire a customer from a competing entity with or without the promotion. As BellSouth could offer a CSA to a previous customer in order to regain that customer and his business, Staff expressed the opinion that the Promotion does not impede local competition. In fact, Rogers states that the Promotion may actually promote competition. For example, NewSouth or TriVergent may obtain a BellSouth customer via resale of the Win Back Promotion.

Rogers testified that the Win Back Promotion is not discriminatory and applies equally to similarly situated customers who have entered the competitive marketplace by switching carriers. Since the promotion applies equally to customers meeting the eligibility criteria, the Staff discerns nothing discriminatory about the Promotion.

In summary, Rogers stated that if promotions such as this one are prohibited in South Carolina, then consumers may suffer. Rogers believes that promotions such as the Win Back Promotion could encourage carriers to reduce prices. Further, since a CSA could be used to provide a customer with the same service at the same discounted price as the service provided pursuant to the Win Back Promotion, Rogers fails to see potential harm to the public by the offering of the Promotion. Rogers finally stated that the Promotion is beneficial, in that it may be resold by a competitor of BellSouth, thereby providing another mechanism in the marketplace for consumers to benefit from competitive prices.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The subject of the complaint is the BellSouth Win Back Promotion. The Promotion has two aspects: 1) a waiver of line connection charges for customers responding to the promotion, and 2) substantial discounts based on monthly billed revenues and the length of commitment that customers are willing to make to BellSouth. The Promotion provided eligible customers with monthly savings of 8%-18% off of their monthly total billed revenue, depending upon whether a customer selected a term agreement of 12, 24, or 36 months. The Promotion was available to previous BellSouth business customers who had elected to go to another service provider within the past two years, who chose to return to BellSouth, and who met certain terms and conditions. Generally, the promotion was available to all business customers in South Carolina who were receiving service from another local exchange carrier and who met the other eligibility requirements for the promotion. To be eligible, the business customer had to have monthly total billed revenues of \$70-\$10,000 when they left BellSouth and had to be willing to sign a term agreement of 12, 24, or 36 months with BellSouth. The promotion had expired at the time of the hearing. Tr., Sellman at 100.

2. The Promotion was filed on May 30, 2000 with the Commission, and was published in the "Advised" section of the Commission's June 5, 2000 Utilities Agenda, all according to Commission procedure. Tr., Rogers, at 201.

3. BellSouth has the authority to file such a Promotion as per its General Subscriber Service Tariff, Section A2.10.1(A)(B). The tariff section provides that

promotions will be offered on a completely non-discriminatory basis to all subscribers meeting the eligibility criteria for each promotion. (Tr., Rogers at 202.)

4. The Win Back Promotion is identical to a Contract Service Arrangement (CSA) which is offered to a customer in response to competition or in response to a competitive offer. The Win Back Promotion is a CSA in the format of a promotion. Tr., Rogers at 203.

5. BellSouth had the authority to offer contract service arrangements pursuant to Order No. 84-804 in Docket No. 84-379-C and Order No. 98-1029 in Docket No. 98-378-C.

6. The Win Back Promotion does not impede local competition. The Promotion was available to any customer who left BellSouth and obtained service from a competitive local exchange carrier. CSA's such as the Promotion are offered in response to a competitive situation. The Win Back Promotion was offered to customers who have chosen to enter the competitive telecommunications market by shopping for a telecommunications provider. BellSouth could have acquired customers from competing entities with or without the Promotion. The Win Back promotion may actually promote competition, since New South or TriVergent could obtain a BellSouth customer via resale of the Win Back Promotion. Tr., Rogers, at 204-205. (See also Tr., Cox, at 163.) There is no abuse of market position by BellSouth.

7. The Win Back Promotion is not discriminatory. It applies equally to similarly situated customers who entered the marketplace by switching carriers. The Promotion applies equally to customers meeting the eligibility criteria. Tr., Rogers at 205.

8. The Win Back Promotion does not violate criteria laid out by the Federal Communications Commission. Although complainant witness Jennings asserts otherwise, the FCC in its September 3, 1999 Order on Reconsideration and Petitions for Forbearance, CC Docket No. 96-149 (Order No. 99-223) actually noted that restrictions on winback activities “may deprive customers of the benefits of a competitive market.” Tr., Cox, at 165.

9. The testimony of Jack Lovegren of TriVergent is instructive, however. Lovegren opined that the Win Back Promotion is harmful to the development of meaningful local exchange competition, because BellSouth, with its history of prior relationships with customers, unlimited ability to offer deals and discounts, and financial wherewithal already enjoys advantages that will enable it to outbid a startup competitor, even without the existence of a Win Back Promotion. We do not agree with all of these assertions, however, we do agree that having prior relationships with customers may give BellSouth some slight advantage in the event of a Win Back-type situation. Accordingly, in the future, BellSouth shall be prohibited from engaging in any Win Back activities for ten (10) calendar days from the date that service has been provided to a customer by a competitive local exchange carrier. This prohibition includes the exchange of information within divisions at BellSouth related to notice that certain end users have requested to switch local service providers. Further, BellSouth is prohibited from including any marketing information in its final bill sent to customers that have switched local service providers. We agree with the FCC that Win Backs are useful as competitive tools, however, we believe that the above-stated restrictions may be helpful to at least allow a

consumer to sample a competitive local exchange carrier's service before being re-solicited by BellSouth.

10. The Complaint must be denied and dismissed, since the Win Back Promotion is neither anticompetitive, nor discriminatory, nor is there an abuse of market position by BellSouth, however, BellSouth shall be subject to the restrictions stated above.

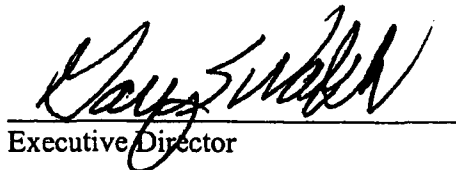
11. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

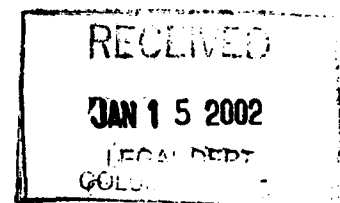
(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2000-378-C - ORDER NO. 2002-2
DECEMBER 9, 2002

IN RE: Southeastern Competitive Carriers)	ORDER GRANTING IN
Association, NewSouth Communications)	PART AND DENYING IN
Corporation and TriVergent Communications,)	PART PETITION
)	
Complainants/Petitioners,)	
)	
vs.)	
)	
BellSouth Telecommunications, Inc.,)	
)	
Respondent.)	
_____)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Reconsideration and Clarification of Commission Order No. 2001-1036 filed on behalf of NewSouth Communications, TriVergent Communications, and the Southeastern Competitive Carriers Association (collectively, the Joint Petitioners).

First, the Joint Petitioners note that this Commission, in Order No. 2001-1036, imposed a prohibition on BellSouth from engaging in "Win Back" efforts until its former customers have been receiving service from a competitor for 10 calendar days. While the Joint Petitioners agree with the ruling in principle, they believe that the Order is subject to misinterpretation, and maintain that clarification would be helpful.



The Joint Petitioners note that a competitive local exchange carrier (CLEC) attempting to provide service to a BellSouth customer must first obtain a Letter of Agency (LOA) from the customer, and then submit the LOA to BellSouth's wholesale division along with a request for the Customer's Service Record (CSR). From the time that the LOA is submitted to BellSouth, the Joint Petitioners maintain that BellSouth's wholesale division has information which would be extremely valuable to its retail division in attempting to retain the customer. The Joint Petitioners further assert that, to be effective, the Commission's prohibition on Win Back activities by BellSouth must begin at the time that the LOA is submitted, and that Order No. 2001-1036 intended to impose such a prohibition. Some proposed language in clarification is then suggested.

We agree that clarification is appropriate, and grant said clarification, although we do not adopt the proposed language propounded by the Joint Petitioners. Instead, we hold that the prohibition on the sharing of information among BellSouth divisions found in Order No. 2001-1036 should begin at the time that BellSouth comes into possession of information from the CLEC which would suggest that a specific customer is considering a proposal from the CLEC. We believe that this appropriately clarifies the intent of our prior Order.

Next, the Joint Petitioners allege that Order No 2001-1036 fails to adequately address the issue of whether the Win Back offerings unreasonably discriminate between similarly situated customers. The pertinent statute provides that BellSouth should set rates "on a basis that does not unreasonably discriminate between similarly situated customers." See S.C. Code Ann. Section 58-9-576(B)(5)(Supp. 2001). We have

examined this question, and must conclude, based on the testimony, that the Win Back promotion does not unreasonably discriminate between similarly situated customers. We disagree with the Joint Petitioners belief that, according to the statute, the Order must explain why the two groups of customers are not “similarly situated” in order to arrive at the conclusion that the discrimination is reasonable. The statute does not say that. It only states that rates must be set on a basis that does not unreasonably discriminate between similarly situated customers. We take this to mean that if a Company can state a good reason for a pricing differential on a service between similarly situated customers, then the different rates are reasonable.

We believe that BellSouth has stated a good reason for the price differential between similarly situated customers. In this case, all of the customers involved are similarly situated as business customers. However, the group of business customers eligible for the promotion has left the BellSouth system, while the other business customers have not. The Joint Petitioners claim discrimination, since the business customers still on the BellSouth system are not eligible for the Win Back rate, which is lower. As noted in Order No. 2001-1036 at 6, BellSouth witness Robert H. Sellman, III testified that BellSouth introduced the Win Back Promotion as a direct response to competition in the business market in South Carolina. Sellman also stated that it often takes more to win back a customer that has established service with a different provider than it does to keep a customer who already has service with BellSouth. This mitigated against offering the promotion to BellSouth’s existing customers. (See Sellman testimony, at TR. 93-158.)

Further, Cynthia Cox of BellSouth testified that the Win Back Promotion was a reasonable response to the actual competition that exists in South Carolina from rival companies. (See Cox testimony generally at Tr. 159-196.)

In summary, we think BellSouth has stated a good reason for the price differential between similarly situated customers. Again, most of this discussion was contained in our prior Order, along with citation to additional testimony that supports this holding.

Lastly, the Joint Petitioners allege that Order No. 2001-1036 conflicts with federal law in contravention of the Federal Telecommunications Act. The Joint Petitioners base their allegation on the notion that the non-discrimination obligation of S.C. Code Ann. Section 58-9-576 is the same non-discrimination obligation contained in Section 202 of the Federal Telecommunications Act. Section 202 makes it illegal for any common carrier to make any unjust or unreasonable discrimination in charges to any particular person or class of persons. 47 U.S.C.A. Section 202 (a). The Joint Petitioners allege error and state that this Commission did not address whether the Win Back Promotions involved reasonable discrimination. First, we do not necessarily believe that the Federal and State non-discrimination obligations are the same. However, even if we did, we hold that so-called “reasonable discrimination” exists with the Win Back Promotion under the Federal standard as well as the State standard.

The Joint Petitioners state that to determine whether a carrier is discriminating in violation of 47 U.S.C.A. Section 202(a), one must employ a three step inquiry: (1) whether the services are “like,” (2) if they are, whether there is a price difference between them; and (3) if there is, whether that difference is reasonable. *Competitive*

Telecommunications Association v. FCC, 998 F. 2d 1058, 1061 (D.C. Cir. 1993). Again, based on the testimony as cited above, and as is cited in Order No. 2001-1036, we believe that there is “reasonable discrimination” under the present scenario, when viewing it under the Federal standard. Frankly, we believe that there is little difference between this standard and the standard in the preceding paragraph concerning whether or not there is a good reason for a price differential between similarly situated customers. However, employing the standard as shown in the *Competitive Telecommunications Association* case, the services to the business customers involved are certainly “like,” and there is a price difference between them. As we have held previously, that difference is reasonable under the circumstances of this case. Clearly, BellSouth has lost anywhere from 20% to nearly 25% of its market share in South Carolina and it is continuing to lose market share at a steadily increasing rate. See Sellman testimony. Further, BellSouth must be able to compete to win back customers lost to competition. Thus, the Win Back Promotion fulfills the criteria set out by the Federal case law.

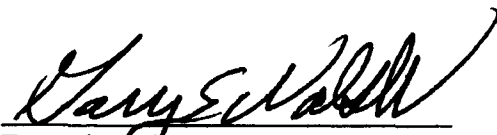
Accordingly, the Petition of the Joint Petitioners is granted in part as described above, and the remainder of the Petition is denied as further described above.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)